UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,098	01/23/2001	David P. Golds	2630	9628

7590   12/20/2005

LAW OFFICES OF ALBERT S MICHALIK PLLC
704-228TH AVENUE NE
SUITE 193
SAMMAMISH, WA 98074

EXAMINER
BULLOCK JR, LEWIS ALEXANDER

ART UNIT	PAPER NUMBER
2195	

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/768,098	GOLDS ET AL.
	Examiner	**Art Unit**	
	Lewis A. Bullock, Jr.	2195	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>11 November 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

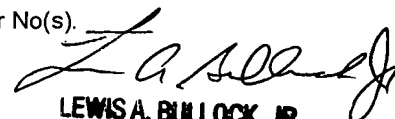   Claim(s) rejected: <u>1-25</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

LEWIS A. BULLOCK, JR.
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are unpersuasive. Applicant argues that the static value which may be assigned to the modules are typically numeric and thus is not the same as Thomas' classifying and ordering based on function classification. The examiner disagrees. As proper under M.P.E.P. 2111, the claims are examined based on the broadest interpretation consistent with the specification wherein it is impermissable to read limitations within the specification into the language of the claims. There is no language in the claims of the value being a numeric value. In addition, because the argument states that the value is typically numeric and not definitive, Applicant is not definitively describing the value as a numeric. Therefore, as proper under M.P.E.P. 2111, Thomas' use of ordering the execution of the plug-ins based on function operation adequately meets the limitation of the claims as disclosed. Applicant states that this still creates a problem in that all similar classified functions are still executed in a random fashion. The examiner disagrees. Thomas also alludes to using ordering hints within the ordering based on functions, wherein one plug-in is always ordered first either overall or within its group, and another is ordered last again either overall or within its group. Again because there is no definitive situation in the claim language, THOMAS allows for two or three plug-ins of the same class ordered for execution wherein one has an ordering hint for executing first while another plug-in has an ordering hint for last based being ordered and executed. Therefore, the remaining plug-in, if there is one at all, would execute in the middle. Hence the order is deterministic and not random. Applicant then argues that the filter drivers cannot be construed as filter drivers as detailed in claim 13. In response, the examiner uses the same logic regarding M.P.E.P. 2111 regarding the incorporation of limitations from the specification into the claim language as detailed above. There is no claim language detailing what is considered a filter driver or how they function or operate within the software modules. In the examining of claim 1, both the plug-ins and filter drivers could be considered a software module, however in claim 13, it would be clear that the software module is the plug-in and the filters of the plug-ins are the filter drivers. In regards to the 103, rejections, Applicant makes an assertion that IP addressing does not, in fact, always have an unassigned value between any two assigned values. The examiner disagrees. M.P.E.P. 2145 (I) details that attorney argument is not evidence where evidence is necessary. In this instance, Applicant is stating that there is no IP address between the two IP addresses 192.92.233.10 and 192.92.233.11 wherein there is no contradictory evidence that this cannot occur. Therefore, the rejection is maintained as disclosed in the response filed 7/18/05. The remainder of Applicant's arguments all refer to the similar arguments as responded to above and therefore the examiner refers to the same response in regards to these arguments in maintaining the grounds for rejection.